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Via ECF and Electronic Mail

Honorable Analisa Torres, U.S.D.J.  
United States District Court  
Southern District of New York  
500 Pearl Street  
New York, New York 10007  
Torres\_NYSDChambers@nysd.uscourts.gov

Re: *Pierce v. Better Holdco, Inc., et al.*  
Case No: 22 CV 04748 (AT)

Dear Judge Torres:

We represent the Plaintiff, Sarah J. Pierce (“Pierce”) in the above-referenced matter.

We write today to provide the Court with a copy of a recent decision, *Brown v. New York Design Center, et al.*, -- N.Y.S.3rd – (1<sup>st</sup> Dept 2023), 2023 N.Y. Slip Op. 01228, 2023 WL 2417772 (published just yesterday), from the Supreme Court of the State of New York, Appellate Division, First Department, which confirms that “extreme and outrageous conduct” is not “a required element in order to sustain a cause of action for negligent infliction of emotional distress.”

While Pierce’s pending complaint does not contain a specific cause of action for negligent infliction of emotional distress (rather asserting a cause of action for intentional infliction of emotional distress), we felt that this opinion should be brought to Your Honor’s attention given the liberal strictures for amendments and conforming the pleadings to the facts even through summary judgment and trial. See FRCP 15(a)-(b); see *e.g.*, *Townsquare Media, Inc. v. Regency Furniture, Inc.*, No. 21-CV-4695 (KMK), 2022 WL 4538954 \*22-23 (SDNY September 28, 2022); *Myers v. Moore*, 326 F.R.D. 50, 60–61 (S.D.N.Y. 2018); *Clomon v. Jackson*, 988 F.2d 1314, 1323 (2d Cir. 1993).

We thank the Court for its time, attention, and courtesies in this regard.

Respectfully submitted,

*Neal Brickman*

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cc: Roberta A. Kaplan  
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